MISCELLANY.

Virginia Board of Law Examiners.

Richmond, Va., January 15, 1913.

QUESTIONS:

A picks up a loaded gun, believing it to be unloaded, and, though warned that it may be loaded, points it at B. The gun goes off and kills B.

1. What crime, if any, does A commit?

2. Suppose B to be merely wounded. What crime, if any, does A commit?

3. In the latter case (that is, the wounding), suppose that the occurrence was in Fluvanna County on August 6, 1912, that A lived in Roanoke County, and left Fluvanna right after the accident. If you advised any proceedings, what action would you bring?

4. In what court would you bring it?

Suppose that you are employed on Tuesday, August 13, 1912, that a term of the court having jurisdiction begins on the fourth Monday in August (the 25th), and another on the fourth Monday in September (the 23d).

5. Which term could you catch and why?

6. Describe exactly what steps you would take towards bringing and maturing suit, from your employment to its call for trial, including every proceeding both in the clerk's office and in the court to that point.

7. On the trial the court instructs the jury as follows: "Gentlemen of the jury, I instruct you to find for defendant." The jury does so, and the court in due course enters judgment. If you desire to carry the case further, describe exactly what steps you would take, from the granting of the instruction to the call of the case for argument in the appellate court.

8. In such case, what papers constitute the record in the appellate court?

Suppose that the case is reversed and remanded, and comes on for trial again in the lower court. Suppose that on the first trial you had put on the stand as your witness the man who warned A that the gun might have been loaded. Suppose that this witness had moved to New York before the second trial, and had an office in the Equitable Building, 120 Broadway.

9. How, if at all, could you secure the benefit of his knowledge of the facts for the second trial?

10. Suppose he had died before the second trial. How, if at all, could you secure the benefit of his knowledge of the facts?

11. Suppose that your client dies before the second trial. How, if at all, does it affect your suit, and what would you do?

12. Suppose the defendant dies before the second trial, but the

plaintiff does not. How, if at all, does it affect your suit, and what would you do?

13. Suppose for the purposes of this question that the plaintiff dies before the second trial, and that his death does not affect the suit. Under what circumstances, if any, can the defendant testify on the second trial?

A business man, finding that his debts amount to $50,000 (none of them reduced to judgment), and his assets to only $25,000, makes a deed of assignment to a trustee, securing first two notes to his wife and son respectively of $10,000 each, and then, after their payment, his other creditors pro rata, and authorizing the trustee to turn the assets into cash and distribute as above. You have reason to believe that the debts to the wife and son are not bona fide. You are employed by creditors representing $30,000 to collect their debts. Assume for the purpose of the next seven questions that the bankrupt law has been repealed.

14. Have the creditors any remedy? If so, what?

15. If you advise any proceeding, state exactly what steps you would take towards instituting and maturing it from your employment until it is at issue.

16. In such case, how is the evidence taken?

17. Is there any method by which on bringing your suit, you can secure priority for your clients in the distribution of the assets in case the litigation is successful; if so, what?

18. Suppose the decision is against you and you wish to take it further. Describe exactly the steps to take, from the decision of the lower court to the call of the case for argument in the appellate court.

19. In such case, what constitutes the record in the appellate court?

20. A debtor conveys a retail stock of goods to a trustee to secure a debt of $10,000 due three years after the date of the deed, the deed providing that the debtor may remain in possession and sell the goods in the ordinary course of business and replenish with new goods until the debt falls due, whereupon, if not paid, the trustee may take possession, convert the goods into cash and pay the debt, and any surplus to the grantor. Is the deed valid or not? Why?

21. An amendment is proposed to the United States Constitution providing that representation in the Senate shall be in proportion to population. It is submitted in the regular way; and all the States except Delaware, Rhode Island and Nevada vote for it. Does it pass?

22. Congress enacts that juries in civil cases in the United States courts shall consist of six, and that two-thirds may render a verdict. Is the law valid?

23. Congress establishes a Code Procedure for the United States courts abolishing the distinction between law and equity and per-

mitting legal and equitable rights of action and defenses indifferently thereunder. Is it valid?

24. When does an act of the General Assembly of Virginia take effect in case no time is fixed in the act itself?

25. A insures his life for $5,000, and is subsequently executed for murder. The policy contains no provision either way as to death under such circumstances. Is the insurance company liable?

26. A goes to the agent of a fire insurance company who is authorized to issue policies, applies for insurance on his house, and pays the premium. The agent promises to deliver the policy in a few days. Pending its receipt the house burns down. Is the company liable?

27. A asks an insurance company to insure his stock of goods against fire in the amount of $5,000. The actual value of the stock is $4,000, and this is inserted in the policy as an agreed valuation. The goods are totally destroyed by fire. Is the company liable, and if so, for how much? Why?

28. Under the Code of Ethics, how far, if at all, can a lawyer defend a client in a criminal prosecution believing him to be guilty?

29. A and his son's widow, both residents of Virginia, decide to marry and go for that purpose to Raleigh, N. C. Assume that the North Carolina law allows such a marriage. They are married there and at once return to their home in Virginia and live as man and wife. Is their marriage legal?

30. By whom may a miner be bound out, and what formalities are necessary to make it valid?

31. A gives a deed of trust to B as trustee to secure three notes held by C, which is duly recorded. He pays the notes as they mature. In the absence of any express agreement on the subject, whose duty is it to take the proper steps and have the necessary papers drawn to make the record show the fact of payment, and what is the simplest way of doing this?

32. What is the difference between general and special warranty of titles in a deed conveying real estate?

33. A's mother is a helpless invalid. B takes care of her for several years until she dies. After her death A sees B and agrees to pay him $1,000 as compensation for his trouble and expense. He subsequently refuses to do so. Can he be held?

34. A statute requires dealers in fertilizer to mark on the bags certain information as to weight, chemical composition, etc., before offering it for sale, and imposes fines and penalties for failure to do so. It contains no provision either way as to whether sales of fertilizer in bags not marked as required by the statute are valid. Can a contract to sell fertilizer be enforced against the purchaser, in case the bags are not so marked?

35. A and B jointly purchase a tract of land under an agreement

to hold it for a certain time, sell it and divide the proceeds. Is this a partnership?

36. One of three members of a partnership devotes his exclusive time to the business and practically runs it unassisted by the others. Is he entitled to compensation for his services in addition to his share of the profits, the partnership articles being silent?

37. What authority, if any, has the executor of an executor over the original estate?

38. Name the different ways in which a will may be revoked.

39. A purchases from B 100 shares of stock of the X. Y. Z. Corporation, and the certificate is assigned to him in regular form. The company refuses to transfer the stock to him on its books and give him a new certificate in his name. What, if any, are his rights and remedies?

40. A assigns a certificate of stock in a corporation to B as collateral to secure a debt. Which of the two has the right to vote the stock at a stockholders' meeting as between each other, and also as regards the corporation?

Successful Applicants.

Following is a list of the successful applicants for license to practice law in Virginia:

Baumgardner, Harry.....Bristol, Tenn.
Clements, Edwin F.....Petersburg, Va.
Homes, Peter P.....Boyden, Va.
Hundley, P. J.....Sandy River, Va.
Kershaw, A. R.....Richmond, Va.
Lancaster, John A.....Farmville, Va.
Perkins, L. B.....Kindick, Va.
Parker, Elmore J.....Drewry's Bluff, Va.

Special Bar Examination Found Majority of Applicants Unable to Get By.—Since the announcement that only eight out of twenty-seven who took the tests passed the special examinations of the State Bar Examining Board, members of the board are rather expecting a revival of the charges of unfairly severe questions put by them to prospective lawyers.

This examination was open only to applicants who had previously failed on at least one bar examination. So many applicants have failed to pass in the last year or two that the State Board determined to give an examination particularly to these men. No favors were shown to the applicants of Wednesday's examinations, although it was called a special test, and they were required to answer substantially the same questions that were propounded to applicants at the regular fall examinations.

The number of failures has aroused widespread comment, in some cases unfavorable, many asserting that the questions have been such as only a lawyer of experience could answer correctly. Aubrey G.

Weaver, a member of the board, issued a vigorous denial of this on Sunday. Of the twenty-seven applicants Wednesday, one was colored. It was the third trial for five, the fourth for one, and the second for twenty-one.—Richmond Times Dispatch of Jan. 17.

Infancy as a Defence.—The decision of the Court of Appeal in Roberts *v.* Gray, furnishes an instructive addition to the series of cases dealing with the capacity of infants to enter into binding contracts. The appellant, the well-known Australian billiard-player, had agreed to join John Roberts, the ex-Champion, in a tour round the world. This agreement he subsequently repudiated, and when sued for breach of contract, he relied on the fact that at the time when the agreement was signed he was an infant. It was held by the Lord Chief Justice that he was bound to carry out an arrangement from which he would have derived valuable professional instruction; and this decision the Court of Appeal has now affirmed. There does not appear to be any difficulty in regarding such professional instruction as a necessary for which an infant can contract. Lord Hardwicke's suggestion in Brooks *v.* Galley [1740], that the rule refers only to the bare elements of subsistence, has long been obsolete. It was held by Baron Alderson in Peters *v.* Fleming [1840] that an infant may bind himself for necessary education as well as for necessary clothes, and it was added that while "a knowledge of the learned languages may be necessary for one, a mere knowledge of reading and writing may be sufficient for another." On the same principle, tuition in billiards may well be necessary for a professional billiard-player. If, however, such "contracts" for necessaries are, as Lord Moulton held them to be in Nash *v.* Inman [1908], mere implied obligations arising re and not consensu, it is difficult to see how they can be binding where the consideration is executory. The Master of the Rolls, therefore, after dealing with the contract as one for necessary instruction, proceeded to bring it also within another class of exceptional agreements—contracts of service which are binding in so far as they are for the infant's general benefit. Contracts for instruction are in this connection distinguished in De Francesco *v.* Barnum [1890] from contracts of service. The logical connecting link is no doubt to be found in contracts of apprenticeship, which savour of both. The arrangement in Roberts *v.* Gray can hardly be called in the strict sense a contract of service, and the fusion of the two principles on which an infant's contracts may be binding is very instructive, pointing back, as it does, to Lord Mansfield's comprehensive dictum (quoted by Buller, J., in Maddon *v.* White [1787]) that "if an agreement be for the benefit of the infant at the time, it shall bind him." It may be added that there appears to be no precedent of equal authority with the present decision for the award of damages for breach even of a contract of service or apprenticeship where the consideration is executory. In Gadd *v.*

Thompson [1911], the apprenticeship was already over when the injunction was granted restraining the ex-apprentice from committing a breach of covenant.—London Law Journal.

The Virginia Debt.—"The Bar" is in receipt of a letter from a responsible citizen of this state, who has given the Virginia debt matter much serious consideration, and is specially well informed on all the features of that controversy.

This is a personal letter and not intended for publication, but is so suggestive and important in some of its statements that we venture to give a few excerpts that indicate its trend.

The main purpose of the letter is to urge the importance of appointing a commission to show up the real facts in the Virginia claim. We confess that this suggestion did not impress us favorably at first reading, for, as we replied to our correspondent, the "facts" were certainly brought out in the suit as fully, or more fully, than any commission could do. But the writer insists that this is a mistake—that the right commission of courageous men would make disclosures that he believes would induce the court to modify its decree, if indeed the suit would not be withdrawn. He is certain that if certain facts were unearthed and published in connection with this Virginia claim that have not been considered and are not known to the public, that the "holders of this debt (viz., the actual owners, as distinguished from holders of expired options) would gladly surrender their certificates at 20 cents on the dollar."

In support of this statement he cites the amount of the debt as stated in the "ordinance of 1861. This included a million of interest, but it is all assumed and counted as principal in the Virginia claim. Another item of $796,000 is included which represents the Virginia bonds held by the United States, for which Congress in 1900 gave Virginia a quit claim, and surrendered the bonds, but they are included in the present Virginia account against West Virginia."

Other things are cited in this letter which make it very suggestive. The writer asserts: "I have personal knowledge that the holders of at least two million certificates will gladly surrender at 20 cents."

His suggestion is that two commissioners be appointed by this state, one to publish facts, and one to negotiate—negotiations not to commence until the facts have been published.

Unless our correspondent is "'way off" there are many things covered up in this Virginia debt case that ought not to be hid. Says he: "Politicians, without exception, tell me confidentially, they are afraid to antagonize such an influence as is behind this scheme."

Statements like these by a responsible source, it seems to us, are not to be passed by indifferently at this juncture. And we know that our correspondent has the courage of his convictions, and would "talk out in meetin'" if given the opportunity—and he ought to have it.—West Virginia Bar, January, 1913.